IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

APPEAL FROM ORDER NO.135 OF 2006

ALONG WITH

CIVIL APPLICATION NO.164 OF 2006

Father Joseph Pereira & Ors. ...Appellants

Versus

Ramdhar Ramgarib Kurmi & Ors. ...Respondents

.....

Mr.Parimal K.Shroff with Mr.Manoj S.Mhambrey for Appellants.

Mr.Vijay Mishra for Respondents.

.....

CORAM: A.M.KHANWILKAR, J.

FEBRUARY 23, 2006.

P.C.

1. Heard Counsel for the parties.

2. The order which is impugned in this Appeal is essentially discretionary order passed by the Court below permitting the Respondent No.1 to file reply affidavit in response to a contempt notice, on requiring the Respondent No.1 to pay cost

quantified at Rs.5,000/- (Rupees Five Thousand). Interestingly, the amount specified towards cost has been deposited by the Respondent No.1 which has been accepted by the Appellants without prejudice. Inspite of such conduct of the Appellants it makes no difference to the consideration of the present Appeal, no interference is warranted against the discretionary order of the Trial Court. If discretionary order is passed by the Court below granting one party time to file reply, that too in contempt action, I fail to understand how grievance can be brought before this Court in that behalf. Obviously, this Court will be slow in interfering against such order. This is more so, in the present case, because the action against the Respondent No.1 is one of having committed contempt of Court. The Respondent No.1, is surely entitled for a fair trial in the said proceedings.

3. The argument of the Appellants that the draft Notice of Motion taken out by the Respondent No.1 praying for time to file reply affidavit to contempt Motion came to be allowed on the same day, without giving opportunity to the Appellants to

file reply to oppose that prayer, is only an argument of desperation. I find no reason to accede to that argument, especially when the order in question as mentioned earlier, is a discretionary order passed by the Court below in contempt action. This Appeal from Order, to say the least, is abuse of process of law.

4. In the circumstances, I see no reason to interfere in this Appeal. This Appeal is dismissed with cost quantified at Rs.3,000/- (Rupees Three Thousand) to be paid by the Appellants to the High Court Legal Services Committee within one week from today.

5. In view of the above, cognate Civil Application is also disposed of.

A.M.KHANWILKAR, J.